
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA

versus

RUBEN MARTINEZ (4)

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CRIMINAL ACTION NO. 4:12-CR-161

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636. On February 24, 2014, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendation that the Defendant's Motion to Withdraw Guilty Plea (Dkt. #149) should be denied.

Defendant maintained his innocence until the start of the trial, at which time he entered a guilty plea before the undersigned. During his plea colloquy, Defendant admitted to his guilt by agreeing to a written statement of facts as well as by stating his conduct in his own words. Defendant also admitted his guilt when he was interviewed by the United States Probation Office. After filing his motion to withdraw his plea, the Magistrate Judge conducted two hearings on the motion. After the Magistrate Judge issued a report and recommendation, Defendant filed objections. The objections have no merit; however, the Court needs to address one statement contained in the objections. Defendant states that "[t]he Magistrate Judge has created false barriers in order to maintain a guilty plea of a person who has asserted he was coerced into pleading guilty and otherwise maintained his innocence." The Court finds this statement offensive and lacking in merit. The Magistrate Judge conducted a thorough review and determined that there was not a fair and just reason to allow Defendant to withdraw his guilty plea. The Magistrate Judge determined that Defendant presented no

credible evidence that Defendant did not have the close assistance of counsel. The Magistrate Judge also found that Defendant's testimony regarding his alleged coercion was less than credible. The Court agrees. Defendant waited to assert his innocence until after his initial Presentence Report was issued, which indicates that Defendant merely had buyer's remorse. Defendant's current counsel may not like the result, but personal attacks on the Court are never appropriate and are uncalled for in this case. The Magistrate Judge simply performed his duty and made credibility findings. The Court finds no error, and the Magistrate Judge did not create "false barriers."

The Court, having made a *de novo* review of Defendant's objections, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court. It is accordingly

ORDERED that the Defendant's Motion to Withdraw Guilty Plea (Dkt. #149) is **DENIED**.

SIGNED at Beaumont, Texas, this 27th day of March, 2014.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE